

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Decided on : 22.01.2019

LPA No.1744 of 2016 (O&M)

State of Haryana and others

..... Appellants

Versus

L.K.Gupta

..... Respondent

LPA No.1789 of 2016 (O&M)

State of Haryana and others

..... Appellants

Versus

Kesar Chand and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Randhir Singh, Addl. AG, Haryana.

Mr. Somnath Saini, Advocate
for the respondent in LPA No.1744 of 2016.

Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate
for the respondents in LPA No.1789 of 2016.

Manjari Nehru Kaul, J.

CMA-3562-LPA-2016

Allowed as prayed for.

CMA-3564-LPA-2016

Application is allowed and documents (Annexures A-1 to A-4)
are taken on record subject to all just exceptions. Office to tag the same at
appropriate place.

CMA-3565-LPA-2016

This is an application filed under Section 5 of the Limitation
Act for condonation of delay of 262 days in filing the appeal.

For the reasons mentioned in the application, delay of 262 days in filing the appeal is condoned.

CMA stands disposed of.

LPA-1744-2016

This order will dispose of both the appeals i.e. LPA Nos.1744 of 2016 and 1789 of 2016 since learned counsel for the parties have submitted that the issue involved in the present appeals is similar. Brief facts of the case have been extracted from LPA No.1744 of 2016.

1. This intra Court appeal filed under clause X of the Letters Patent by the State of Haryana assails the order dated 19.11.2015 vide which the learned Single Judge allowed the writ petition filed by the respondent.

2. The controversy involved in the present appeal is whether the land measuring 128 sq. yards allotted to the respondent was being used for residential purposes or for commercial purposes.

3. Learned Single Judge vide order dated 19.11.2015 decided the issue in dispute in favour of the respondent by holding that the Chief Settlement Commissioner erred in holding that the property in question was being used for commercial purposes which as per the survey conducted by the Deputy Commissioner, Faridabad was in fact being used for residential purposes.

4. Learned counsel for the appellants has impugned the order passed by learned Single Judge on the ground that the learned Single Judge erred in not appreciating the fact that pursuant to the spot inspection carried out by Tehsildar (Sales)-cum-Managing Officer, Faridabad it was found that

the property in question was being used by the respondent for commercial purposes and hence, commercial rates were applicable to the said property.

5. On the other hand, learned counsel for the respondent has submitted that Sh. Amit Kumar Aggarwal, the then Deputy Commissioner, Faridabad had conducted the survey in terms of the order dated 02.07.2015 passed by this Court and submitted the status/survey report dated 05.11.2015 in which it had been mentioned that the property of the respondent bearing No.1-C/44 measuring 128 sq. yards involved in CWP No.3598 of 1994 and the property bearing No.5-H/46 measuring 233 sq. yards in CWP No.11541 of 1994 were being used for residential purposes.

6. We have heard learned counsel for the parties and with their assistance have perused the material available on record.

7. It would be relevant to reproduce the order dated 02.07.2015 passed by learned Single Judge, which is as follows:

“Since one of the disputes is also regarding the charging of compounding interest on the basis that the part of the allotted premises are being used for a commercial purpose, it is deemed expedient to direct the Deputy Commissioner, Faridabad to get a survey conducted and submit a report detailing the total area allotted and the area of the portion being put to commercial use, if any.

List on 19.11.2015 for consideration.”

8. It was in pursuance to the aforementioned order that the Deputy Commissioner, Faridabad had got a survey conducted and submitted his report dated 05.11.2015.

9. We do not thus, find any infirmity in the impugned order of the learned Single Judge inasmuch as once the property in question had been

found to be used for residential purposes in a survey conducted by the Deputy Commissioner, Faridabad himself, there was no question of the same having been used for commercial purposes. In our considered opinion, learned Single Judge was fully justified in holding that in case the property in question was used for purposes other than residential, it could be resumed after issuance of due notice.

10. Accordingly, the present appeals being devoid of merit are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

22.01.2019

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No